of services". Mental anguish is an element of damage, once the cause of action is established. *Magee* v. *Holland, supra.* And in *Howell* v. *Howell,* 162 N. C. 283, 78 S. E. 222, 45 L. R. A. (N. S.) 867, Ann. Cas. 1914A, 893, it was held that the jury had a right to award compensatory damages for the wrong and for the mental anguish, and might also award punitive damages.

SPECIFIC PERFORMANCE—CONTRACT TO CONVEY LAND—TIME AS OF THE ESSENCE.—Appellant and appellee signed a memorandum of sale in which appellant agreed to convey land to appellee, the agreement providing that unless the sale should be concluded within thirty days, appellee's deposit, receipt of which was therein acknowledged, should be forfeited. Ten days after the time fixed in the contract for its performance had expired, appellant's attorney accepted from appellee's attorney the balance of purchase money due. The appellant, however, refused to convey the property, and appellee brought suit for specific performance. *Held,* appellee not entitled to specific performance. *Stern* v. *Shapiro* (Md.), 114 Atl. 587.

In actions at law, it is well settled that time is of the essence of contracts to convey land, and a strict compliance within the time stipulated is required. *Hill* v. *Fisher,* 34 Me. 143; *Shinn* v. *Roberts,* 20 N. J. L. 435, 43 Am. Dec. 636. But in equity, time is *prima facie* not essential unless expressly declared to be essential or unless it clearly appears to be so from the nature of the contract; and since equity treats provisions as to time of performance as formal rather than essential, it will not hesitate to compel specific performance after the time has expired. *Vance* v. *Newman,* 72 Ark. 359, 80 S. W. 574, 105 Am. St. Rep. 42; *Jones* v. *Robbins,* 29 Me. 351, 50 Am. Dec. 593. In any case, however, the awarding of specific performance is not mandatory upon the chancellor but is a matter of sound discretion, since the plaintiff was delinquent in not performing his part of the contract by the appointed time. *Young* v. *Daniels,* 2 Iowa 126, 63 Am. Dec. 477; *Boldt* v. *Early,* 33 Ind. App. 434, 70 N. E. 271, 104 Am. St. Rep. 255. Unless it clearly appears that time was regarded by the parties as essential, courts of equity will grant specific performance, requiring the defendant to make a deed to plaintiff and compensating the former by allowing him interest on the deferred payments; because "compensation", not "forfeiture", is a favorite maxim in a court of equity. *Frink* v. *Thomas,* 20 Or. 265, 25 Pac. 717, 12 L. R. A. 239.

Clauses which make time an essential element in contracts to convey land are construed strictly. Thus a mere naming of the days when payments will fall due does not render the contract void if payments are not made promptly. *Vance* v. *Newman, supra.* And if it would be unreasonable to allow it, time will not be held essential even where the contract to convey land declares it to be essential. *Richmond* v. *Robinson,* 12 Mich. 193. Again, where the contract expressly called for a forfeiture of the payments already made in case any subsequent installment should be omitted at the time due, the court found that time was not of the essence and compelled the vendor to give specific

performance. *Edgerton* v. *Peckham*, 11 Paige (N. Y.) 352. It has even been held that the vendor cannot rescind a contract for delinquency in the payment of an installment where it was agreed after the original contract was made that upon the vendee's failure to pay promptly, all prior payments should be forfeited. *De Camp* v. *Feay*, 5 Serg. & R. (Pa.) 323, 9 Am. Dec. 372. It is doubtful whether these last two decisions are sound. The more reasonable rule of the United States Supreme Court is that in such cases of late payments by the vendee, specific performance will be given only if his failure to pay promptly was excusable, as where the vendor's conduct encouraged the purchaser to defer payment and the latter, with but little delay, tendered payment in lawful money. *Cheney* v. *Libby*, 134 U. S. 68. On principle and by the weight of authority, the better rule is that announced in the instant case, viz., that wherever the parties to a contract to convey land have deliberately stipulated that time shall be of the essence (or used words to that effect), a court of equity will so construe the contract and leave the vendee without a remedy if he does not comply in time. *Waterman* v. *Banks*, 144 U. S. 394; *Garretson* v. *Vanloon*, 3 G. Greene (Iowa) 128, 54 Am. Dec. 492; *Wilcoxson* v. *Stitt*, 65 Cal. 596, 4 Pac. 629, 52 Am. Rep. 310.

TELEGRAPHS AND TELEPHONES—INJURY BY FAILURE TO FURNISH TELEPHONE SERVICE ACTIONABLE.—Plaintiff, who was a regular subscriber of defendant company, discovered that two of his horses had been accidentally poisoned, and sought to reach a veterinary over defendant's telephone line. Plaintiff lived ten miles from the nearest town, and the horses were so sick that he could not leave them, and although he advised the operator of the urgency of his call, and tried repeatedly, it was twelve hours before he could obtain medical aid, and the horses died. It was shown that one of the veterinarians was in his office for four hours during the time plaintiff was calling, and would have answered the call at once if he had received it. Plaintiff brought an action for the loss of the horses, alleging that in all reasonable probability the horses could have been saved with prompt medical attention. The defendant demurred generally. *Held*, averment is not so uncertain and conjectural as to be demurrable, but the question is one of fact for the jury. *Peterson* v. *Monroe Independent Telephone Co.* (Neb.), 182 N. W. 1017.

Telegraph and telephone companies are not held to the strict liability of common carriers, and are consequently not insurers of the safety of transmission of messages. *Primrose* v. *Western Union Tel. Co.*, 154 U. S. 1. But they are liable for such damages and only such as naturally and proximately result from their negligent performance of their duty as to the transmission and delivery of messages. *Western Union Tel. Co.* v. *Schriver*, 141 Fed. 538, 4 L. R. A. (N. S.) 678; *Hall* v. *Western Union Tel. Co.*, 59 Fla. 275, 51 So. 819, 27 L. R. A. (N. S.) 639. It is very often on account of the failure to show that the loss or damage is the natural and proximate result of the telegraph or telephone company's negligence that the courts refuse to hold the